



July 2015
Volume II, Issue 5

Special Interest Articles

Fee Changes
Farewell to ED/CFO
Solicitation
The Patriot Project
Board Certification
Dry-Needling

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Texas Chiropractic Board Report

The mission of the Texas Board of Chiropractic Examiners is to execute the statutory authority of the Texas Chiropractic Act and to promote, preserve, and protect the health, safety, and welfare of the people of Texas by licensing skilled professionals and enforcing standards of practice.

Fee Changes Effective September 1, 2015

-by Yvette Yarbrough, Executive Director



Effective September 1, 2015, some licensure fees will be changing for Doctors of Chiropractic in Texas.

House Bill 7 (from the 84th Legislative Session) has authorized the repeal of a \$200 occupational and/or professional fee imposed on Doctors of Chiropractic, as well as numerous other professions.

This \$200 made up a large portion of fees such as license application fees, repeat jurisprudence exam fees, and active license renewal fees.

Any application or renewal fees paid on or after September 1, 2015 will be reduced by the \$200.

September license renewals are due September 1. Any renewals received after September 1 will incur a late fee in addition to the \$162 renewal fee.

Also, any renewals that are payable before September 1 (for example, a renewal due July 1, 2015) that are actually paid after September 1, 2015 will still include the \$200 occupational and/or professional fee, along with a late fee.

Please e-mail your questions to Jennifer Hertsenberg, Director of Licensure jennifer@tbce.state.tx.us.

The repeal is not effective until September 1, so **ANY APPLICATION OR RENEWAL FEE PAID BEFORE SEPTEMBER 1, 2015 MUST STILL INCLUDE THE \$200 OCCUPATIONAL AND/OR PROFESSIONAL FEE.**

Yes, this means if you want to pay your September fee in August, you must include the \$200 fee. ♦



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Executive Director

Farewell Message from the Executive Director



This issue of the *Texas Chiropractic Board Report* is a bittersweet issue for me. It is with a very heavy heart that I announce my resignation as Executive Director of the TBCE; I have accepted a position with another state agency where I will return to the practice of law. My last day will be Friday, August 21st, which allows me to finish out business at the Board meeting being held on August 20th. Dr. Cynthia Tays, our Board President, and Mr. Bryan Snoddy, our General Counsel, will handle ongoing issues until my replacement is hired.

The decision to leave the TBCE was a difficult one, especially with the Sunset Review of the agency coming up. However, as I'm sure you all can understand, I had to make the decision to put my family first and move to a position that will allow me to focus more on my family.

It has been my privilege and honor to serve as Executive Director of the TBCE for the past four years. Thank you to the Board members, present and past, for being such wonderful bosses! Thank you to the agency staff – I think of each of you like family and will miss you immensely. Also, I thank each of you, the licensees, for your service to the patients of the state of Texas. I encourage you all to stay involved with the regulation of your practice. Having an engaged licensee base has made this position enjoyable (well, most of the time...!).

The TBCE is also losing a great employee as our CFO retires on August 31st. Ms. Arlethia Middleton has been a great asset to the TBCE and made my job so much easier through her professionalism, accounting skill, and attention to detail. I wish her and her husband the best and hope they enjoy a well-deserved retired life!!

In closing, I leave knowing the TBCE is in the hands of a great Board and a great staff. I've worked hard the past few years to improve the agency and hope that hard work reflects in the service our agency provides. An incredible quote by the great Mother Theresa states "I alone cannot change the world, but I can cast a stone across the waters to create many ripples." Many of the ripples I've created haven't been the most popular, but I do believe that I have left TBCE a little better than how I found it. I know the great work of the agency will continue and I know regulation of chiropractic will continue to serve the people of Texas. My best to you all....

Yvette Yarbrough – Executive Director

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Solicitation of Patients and Marketing in Texas

-by Michele Quattlebaum, J.D.

In Texas, it is not only unethical, but it is also illegal for a chiropractor, attorney, physician, surgeon or private investigator to solicit an accident victim for the purpose of rendering chiropractic, medical or legal services before the 31st day after the date on which the accident or disaster occurred.



Some professionals, simply motivated by monetary gain, disobey the rules and violate the law. Often, the solicitation occurs when the attorney or a *runner* associated with the law firm approaches an accident victim and hands out business cards for both the attorney and the doctor, or provides this information by phone to the accident victims. In other situations, the chiropractor directly solicits the accident victim in writing or in person.

Although the laws prohibiting the solicitation have been challenged as unconstitutional, they have ultimately been found to be constitutional and remain in effect.

If an employee of your clinic participates in this activity, you can also be held responsible for their actions.

Conviction of solicitation and/or barratry of professional employment laws can result in fines, jail time, and even revocation of your license.

Recently, law firms throughout Texas are advertising their ability and willingness to file civil actions against lawyers and doctors for violation of solicitation laws.

These firms have become interested in pursuing barratry cases because the relevant statutes provide restitution to the prospective patient (*barratry victim*) in the form of a \$10,000 penalty per solicitation.

Since 2011, Texas law has allowed victims of barratry to bring suit against the lawyer, case runner and chiropractor involved, for restitution of any monies paid to these offenders in addition to the \$10,000 penalty. Even if the individual bringing suit never received any actual services from the chiropractor he can still collect the \$10,000, as it is considered an automatic penalty for violation of solicitation/barratry laws. In addition to filing civil lawsuits, these law firms (or barratry victims themselves) are filing simultaneous board complaints against the doctors. These lawsuits have predominantly been centered in Dallas, El Paso, Brownsville, McAllen, and Corpus Christi but they are beginning to be filed in other venues across the state.

It doesn't take a calculator or actually much brain power to determine that the profit you could potentially make from the care and treatment of one accident victim is not worth paying that same patient a \$10,000 penalty, in addition to potentially getting fined, jailed or even losing your license.

Do not allow attorneys and the conduct of their representatives to jeopardize your family's livelihood. Do not believe that it is permissible under Texas laws to practice such solicitation. These laws are constitutional and are being enforced.

(con't on page 4)



Solicitation of Patients and Marketing in Texas (con't from page 3)

Chapter 38 of the Texas Penal Code, Sec 38.12 provides that a person commits the offense of Barratry and Solicitation of Professional Employment if:

- 1) an attorney, chiropractor, physician, surgeon or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state
- 2) with the intent to obtain professional employment for the person or for another, provides or knowingly permits to be provided to an individual who has not sought the person's employment, legal representation, advice, or care a written communication or a solicitation, including a solicitation in person or by telephone.

*The solicitation must occur before the 31st day after the date on which the accident or disaster occurred.

*The solicitation has to involve coercion, duress, fraud, overreaching, harassment intimidation, or undue influence.

*The injured party must also indicate that he did not desire to be contacted.

Convictions under §38.12 can result in a misdemeanor or felony charge, depending on the circumstances, and whether the accused has a prior offense on record. Additional conduct which you must avoid is solicitation of patients in violation of Texas Occupations Code, Title 3, Subtitle a, Chapter 102. Section 102.001 provides that a person commits an offense of soliciting patients if:

the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in

cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person license, certified, or registered by a state health care regulatory agency.

A violation of this code, just as the penal code, can result in a misdemeanor or felony conviction, depending on the circumstances and whether the accused has a prior offense on record.

In plain English, you can be guilty of a crime if you provide compensation to an individual for the purpose of securing of patients.

It is not a crime to pay a marketing company or individual a general fee or salary for marketing/advertising to the public. However, if this individual or company's compensation is based *per head* of patients received by the clinic, this could definitely be a potential violation of §102.001. There are different ways that doctors, attorneys or others are disguising the referral of patients, but if you are paying an individual, directly or indirectly, for the referral of patients, per head, you could be in violation of this Code. Violations of §102.001 can result in fines of up to \$10,000 for each day of violation, and each act of violation.

The final amount fined can vary based on the individual involved and the nature of the solicitation action taken by the doctor. With the increasing amount of law suits and board complaints being filed on the subject of improper and illegal solicitation, all chiropractic licensees need to be acutely aware of the laws concerning these acts, in order to avoid crossing the line and jeopardizing their practice and career. ♦

The Patriot Project: Chiropractic Military Care

- Reported by the *Texas Journal of Chiropractic*



Any soldier who has had to carry an 80- to 120-pound pack with body armor has musculoskeletal issues. On top of that, too many veterans are committing suicide each day – one-third of those as a result of their medication. If you participate in The Patriot Project, you can help save lives, families and communities.

The Patriot Project-Military Chiropractic Care is now more than 700 doctors strong and growing! The Patriot Project is a grass roots movement to provide chiropractic care to all Active Duty Military, their families, Wounded Warriors and all Gold Star Dependents. Each participating doctor makes time available at least once each week to treat at least one Active Duty Service member, their family, Wounded Warrior or Gold Star Dependent at no charge.

When caring for Active Duty Military and their families, ask to see a copy of their DD214 or their TRICARE Card. For veterans with service-related injuries, you will need a copy of their service connection papers issued by the Veterans Administration. This includes documenting each case with situations and testimonials. By joining The Patriot Project, you will be giving one of these most deserving people hope.

They serve-we support!

Here's what you can do:

- Register with the Patriot Project at <http://patriot-project.org>
- The Patriot Project images and logo are copyrighted, but you have permission to use them. Share them on your website and Facebook page! Download the sign and hang it in your office, have it on staff scrubs and consult jacket etc.
- Link your website to <https://patriot-project.org>
- Reach out to your community and local media. Let them know what you are doing! You're supporting a nationally recognized non-profit foundation. Once your community knows what you are doing, they will support you.
- Like them on Facebook: <https://www.facebook.com/ThePatriotProject>
- Take pictures of you and or your staff helping one of these most deserving individuals and share it on their Facebook page.
- Follow them on Twitter: [@PatriotProject7](https://twitter.com/PatriotProject7)

We want you to take this seriously. These men and women leave *their* homes to protect *our* families and *our* homes.

Freedom isn't free. ♦

Continuing Education 101

-by Jennifer Hertsenberg, Director of Licensure

A licensee is required to attend continuing education courses as a condition of renewal of an active license unless the licensee has a qualifying exemption such as:

- (1) A licensee who holds an inactive license
- (2) A licensee who served in the regular armed forces of the United States during part of the twelve (12) months immediately preceding the annual license renewal date;
- (3) A licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with CE requirements during the twelve (12) months immediately preceding the annual license renewal date; or
- (4) A licensee who is in their first renewal period.

A licensee must complete sixteen (16) hours of approved continuing education each renewal cycle, four (4) of which are in Board-required topics and a one-time eight (8) hour requirement for Medicare. The Board-required topics include a minimum of three (3) hours specifically related to the Board's rules including the Board's code of ethics, recordkeeping, documentation and coding and a minimum of one (1) hour of risk management relating to the practice of chiropractic in Texas. These required hours cannot be taken online, unless the course is offered directly from the TBCE.

No more than six (6) hours may be obtained through online courses. A webinar and/or teleseminar is considered a LIVE course as it is real time and interactive.

Licensees initially licensed **before** September 1, 2012 were required to complete the one-time eight (8) hour Medicare requirement in calendar year 2011 or 2012. Licensees initially licensed on or **after** September 1, 2012 must complete at least eight (8) hours of continuing education in coding and documentation for Medicare claims **no later than their second renewal period.**

The sixteen (16) hours may be completed at any course or seminar chosen by the licensee, as long as the course or seminar has been approved by the Board.

All approved courses can be found on our website at www.tbce.state.tx.us, under the link, "Continuing Education." If the course contains the four (4) Board-required hours and/or the Medicare hours, it will state so in **bold, red letters** under the course name.

If your hours cannot be verified at the time of renewal, your license will be renewed, but it will be placed in a "CE Conditional" status for up to twelve (12) months. At the conclusion of the twelve (12) months, if you still have not remedied the delinquent CE Hours, your license will be considered expired, backdated to the beginning date of the probationary year and closed for non-renewal. This means that if your license was closed for non-renewal and you wanted it back, you would have to reapply

(con't on page 10)

Inactive License Updates -by Jennifer Hertsenberg, Director of Licensure

DID YOU KNOW...

- A licensee can renew as inactive for **up to twenty (20) years**.
- A licensee may return to active status after having been on an inactive status for **five (5) years or LESS** by taking and submitting proof of sixteen (16) approved hours of continuing education, including all required hours (TBCE and/or Medicare), with an active renewal form and a cashier's check or money order for the renewal fee. The licensee can then **return to inactive** at the next renewal.
- If a licensee has been inactive for **more than five (5) years**, the licensee can return to active status upon successfully passing Part IV of the NBCE and the Board's Texas Jurisprudence Examination or through other means if the license is exempt.

TAC Rule §75.4 states:

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §75.5 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation. A licensee who has maintained an inactive status with the Board for a period greater than five (5) years may be exempt from compliance with the requirement of this subsection to retake Part IV of the National Board of Examination if they have held an active, unrestricted license in another state or foreign jurisdiction that is held in good standing. In no event shall an inactive status be maintained before this Board in excess of twenty (20) years.

DID YOU KNOW...

- The inactive processing fee for an annual inactive license is \$80.00 as of January 1, 2014. This fee can be paid by cashier's check, money order, or personal/company check.
- An inactive license cannot be processed online.
- The inactive form no longer requires a notarization. However, you are required to state your full name, address, date of birth and attest by signature and date that the information you provide the Board is true and correct.

Agency Licensing & Registration Information through 06/30/15



Number of Chiropractic Doctors	
Active License	5145
CE-Conditional License	326
Expired License	247
Inactive License	619
Non-Renewable License	2422
Probated License	18
Suspended License	5

Number of Chiropractic Facilities	
Active Registration	4243
Expired Registration	155

Number of Radiologic Technologists	
Active Registration	99
Expired Registration	46

Think You're Board Certified by TBCE or NBCE? Think Again...

-by Yvette Yarbrough, Executive Director



One issue that TBCE Enforcement Committee members have seen is the improper use of the term "board certified" by licensees.

The use of this term is allowable if one currently holds a diplomate, fellow, or other certification or credential from a specialty board. Specialty boards award these certifications/credentials to licensees who have completed some specified amount of training and/or examination. While the TBCE does not regulate these specialty boards, the use of the term "board certified" is regulated by the TBCE.

Many licensees describe themselves in advertising or in their CVs as a diplomate of or board certified by the National Board of Chiropractic Examiners (NBCE).

This is inappropriate considering it suggests advanced training. In most states, the NBCE Examinations Parts I-IV are a prerequisite to licensure, but completion of these examinations does not grant any certification or diplomate status to licensees.

Similarly, the TBCE does not grant any status to a licensee authorizing the use of the term "board certified by the TBCE." The TBCE grants licenses to practice chiropractic and regulates licensees.

Improper use of the term *board certified* or improper reference to a specialty status in advertising or public communication could be considered false, fraudulent, misleading, deceptive or unfair advertising.

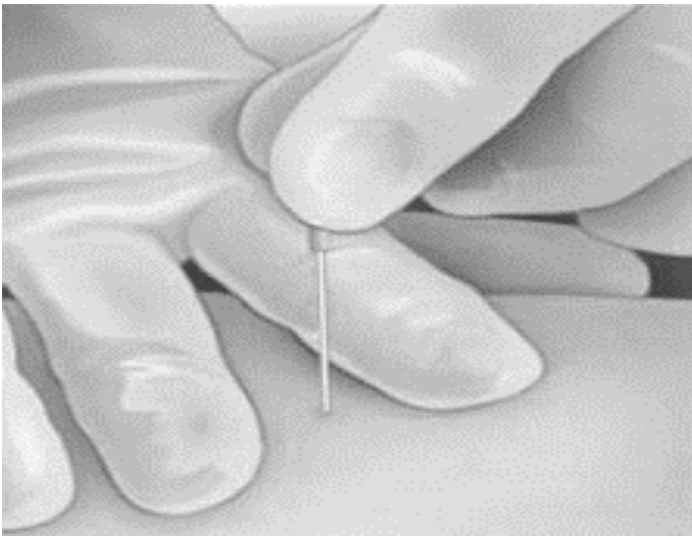
Board Rule 77.2 provides guidance on the use of the term "board certified." In any form of public communication using the phrase *board certified* or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.



This is to avoid the *alphabet soup* that follows some doctors' names, which is confusing to members of the public, without some explanation of what those letters mean. ♦

Do You Perform Dry-Needling?

-by Bryan Snoddy, TBCE General Counsel



No discussion of practice in Texas is ever complete without first identifying the authority which permits a licensee to engage in that scope of practice. The Chiropractic Act, section 201.002, permits a D.C. to perform modalities that “are nonsurgical” and “nonincisive” that “improve the subluxation complex or the biomechanics of the human body.” As described in an opinion authored by the Office of the Attorney General, which was recently affirmed by a Texas district court, acupuncture is a modality that is appropriate to use. So, where does dry-needling fit in?

Under [rule 78.14\(a\)](#), the Board has stated that acupuncture and its *related practices may be used to diagnose and treat “by stimulating specific points on or within the musculoskeletal system....to obtain[] a biopositive reflex response by nerve stimulation.”* Just using the principle of plain language, dry-needling uses the same filament needles as one would use in acupuncture. Thus, the Board draws no distinction from one practicing dry-needling or acupuncture and finds it to be a related practice.

Of course, they are different concepts, but from a purely regulatory perspective, licensees should be aware that if you are performing dry-needling, then you must comply with the acupuncture rules.

If you were licensed PRIOR TO January 1, 2010, you must either:

- 1) Complete at least one-hundred (100) hours training in undergraduate or postgraduate classes in the use and administration of acupuncture provided by a bona fide reputable chiropractic school or by an acupuncture school approved by the Texas State Board of Acupuncture Examiners;
- 2) Complete the national standardized certification examination in acupuncture offered by
 - a. National Board of Chiropractic Examiners; or
 - b. National Certification Commission for Acupuncture and Oriental Medicine;
- 3) Complete at least one-hundred (100) hours training in the use and administration of acupuncture in a course of study approved by the Board; or
- 4) Be an existing licensee that has been trained in acupuncture, that has been practicing acupuncture in good standing in Texas and any other jurisdiction that has met the hour(s) requirement by counting each year of practice as ten (10) hours of training in the use and administration of acupuncture.

If you were licensed AFTER January 1, 2010, you must complete the national standardized certification examination in acupuncture offered by:

- 1) National Board of Chiropractic Examiners; or
- 2) National Certification Commission for Acupuncture and Oriental Medicine.

Rule 78.14 is clear. If you are practicing acupuncture and its related practices, like dry-needling, you must practice according to the Board’s rules. Don’t get caught out of compliance; failure to comply can cost you up to \$1,000 per day of noncompliance. ♦



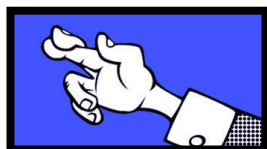
Continuing Education 101 (con't from page 6)

as a new licensee, meet all current requirements, and sit for the Texas Jurisprudence Examination.

At the conclusion of the twelve (12) months, if you still have not remedied the delinquent CE hours, your license will be considered expired, backdated to the beginning date of the probationary year and closed for non-renewal.

Your Continuing Education course sponsor is responsible for submitting a roster to the Board within thirty (30) days of the course completion date. We use this roster to credit licensee hours. If you have a certificate of completion, we will accept the certificate as documentation until a roster can be received.

The TBCE licensing staff audit licensee CE completion upon RENEWAL and not upon license expiration date.



Reminder: Continuing Education for New Licensees

Your first renewal cycle is pro-rated and is usually not a full twelve months long, so completion of your Continuing Education (CE) requirements is not required until after your first license renewal. When you renew your license for the second time, you should have completed sixteen (16) hours of approved CE, including the four (4) hours in Board-required topics.

You must also complete at least eight (8) hours of CE in Medicare coding/documentation within twelve (12) months of when you received your license. These hours can count towards your regular CE requirement.

Therefore, if you are born in February and licensed on November 1, 2015, you are required to complete eight (8) hours of Medicare coding/documentation CE by November 1, 2016. You would then need to complete another eight (8) hours of CE, including the four (4) Board-required hours by February 1, 2017.

If you have questions regarding these requirements, please read through [Board Rule 75.5](#). You may also contact Jennifer Hertsenberg, Director of Licensure, at jennifer@tbce.state.tx.us or Sarah Matthews, Licensing Assistant, at sarah@tbce.state.tx.us. A list of all approved CE courses can be found on the [TBCE website](#) under the “Continuing Education” link. ♦

Don't risk losing your license by not completing your CE hours!

For more information about Continuing Education, check out our webpage at www.tbce.state.tx.us under the link “Statutes and Rules” by selecting the Texas Administrative Code and Chapter 75, [Rule §75.5](#) and [Rule §75.6](#).

To check on whether your hours are up to date and complete, contact:

- Sarah Matthews, Licensing Assistant
(512) 305-6707 or sarah@tbce.state.tx.us
- Jennifer Hertsenberg, Director of Licensure and CE Standards
(512) 305-6702 or jennifer@tbce.state.tx.us ♦

Staff Spotlight: Ms. Arlethia Middleton to Retire August 31, 2015



The TBCE's Chief Financial Officer, Arlethia Middleton, will be retiring on August 31st after over 23 years of state service.

Ms. Middleton came to the TBCE in 2008 and greatly improved the fiscal operation of the agency. Prior to working at the TBCE, Ms. Middleton was an Accounting Specialist at the Office of Court Administration, the Lead Accountant at the Texas Medical Board, and an Accounting Clerk at the Texas Board of Architectural Examiners.

During Ms. Middleton's tenure at the TBCE, the agency has garnered praise from the Texas Comptroller's Office and has done well on audits. We thank her for her great work and service to the TBCE and congratulate her on her retirement!!

Have You Moved?

Board Rule 75.1 requires licensees to maintain a current physical home and business address with the Board.

"If you fail to notify the Board of a change in your address, you face a disciplinary action and up to a \$250 fine!"

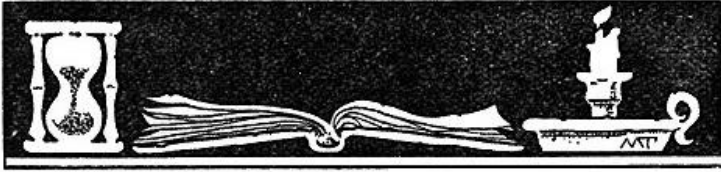
The same rule also requires licensees to notify the Board in writing of any change in address within 30 days of that change. Additionally, [Board Rule 73.4](#) requires a facility to notify the Board in writing of any change in street or mailing address or ownership within 30 days of that change.

Please note that merely submitting a change through Texas Online when completing a license or registration renewal will NOT change your address with the Board. Unfortunately, we do not receive notice of those changes from Texas Online.

If you fail to notify the Board of a change in your address, you face a disciplinary action and **up to a \$250 fine!** Don't let this happen to you! ♦

Changes of address can be sent to the Board via mail, fax, or email to sarah@tbce.state.tx.us. A [change of address form](#) is available on our homepage at www.tbce.state.tx.us under the "Forms and Downloads" link.





Keeping Up With the Rules

Did you know that you can keep up with rules that the Texas Board of Chiropractic Examiners (TBCE) has proposed or adopted online?

The TBCE uploads all proposed and adopted rules onto our homepage at www.tbce.state.tx.us under the “[Rules-Recent & Proposed Changes](#)” link.

Additionally, you can view current rules from the Secretary of State website, which is linked to our homepage under the “[Statutes and Rules](#)” link.

All proposed and adopted rules are published in the *Texas Register*. Current and past issues are available at <http://www.sos.state.tx.us/texreg/portal.shtml>

If you'd like to be notified by email whenever the TBCE proposed, adopts or withdraws a rule or schedules an open meeting, you can contact the Texas Register at 512-463-5561 or register@sos.state.tx.us.

We encourage all licensees to monitor proposed rules published in the *Texas Register* and to regularly comment on these proposed rules. Comments must be in writing and sent to the Executive Director via mail or email rules@tbce.state.tx.us within the specified time period. ♦

TBCE Board Meeting Schedule



TBCE Board Meetings

Hobby Building, Tower 2, Room 225

- August 20, 2015 (1:00 pm)
- November 19, 2015 (1:00 pm)
- February 18, 2016 (1:00 pm)
- May 16, 2016 (1:00 pm)
- August 18, 2016 (1:00 pm)
- November 17, 2016 (1:00 pm)



What Did the Texas Legislature Decide on Chiropractors' Ability to Do UIL Physicals? In a nutshell....nothing.

In the last two issues of the Board Report, we reported on the UIL Sunset Bill – Senate Bill 213, which dealt with the functions and duties of the University Interscholastic League (UIL). The original filed version of the bill defined who could conduct pre-participation physicals and effectively eliminated the ability of DCs to conduct these physicals. An amendment to the bill in the Senate Education Committee deleted the controversial elimination of DCs, and the bill progressed through the Senate. However, that bill wound up dying in the House of Representatives, as it was never considered in the House Public Education Committee.

Therefore, the status quo is maintained as far as DCs' ability to conduct UIL physicals – DCs can continue to conduct the pre-participation physicals as normal. ♦

Survey Says.....

-by Yvette Yarbrough, Executive Director and Bryan Snoddy, TBCE General



In some instances, the licensee/facility owner does not answer and TBCE staff must leave a message, if possible. However, TBCE staff will generally not attempt to re-contact the licensee after a message is left due to limited time and resources.

"I think the TBCE should be more proactive (and levy stiffer penalties) in disciplinary actions with the DCs committing violations. The few 'bad apples' make everyone look bad, and they need to be delt [sic] with more severely."

Over the last few months, customer service surveys were sent on behalf of the TBCE. Many responses contained helpful suggestions, constructive criticism, and praise for the work of the Staff and Board. However, some responses presented matters where further dialogue is appropriate. Other responses indicated potential misunderstandings of what the TBCE's function, role, and purpose. We address some of these responses below to aid in understanding our mission and focus.

"It is overly difficult to get a person on the phone from your office."

The TBCE staff is limited in number – only 14 employees. Within the office, only two (2) employees handle licensing matters. Only one (1) employee handles administrative matters in enforcement. Two (2) employees work in the legal division, one of whom is the TBCE's general counsel. As you can imagine, their call volume is high, and their list of duties and responsibilities is long.

Staff employees are required to keep detailed phone logs- listing when calls are received and made and when voicemails are received and returned. The Executive Director reviews these phone logs monthly. Established office policy provides that voicemails are to be returned within 72 hours. Usually, a voicemail is returned promptly.

The TBCE Enforcement Division (staff) thoroughly investigates all complaints. If a violation of the Chiropractic Act or Board rules is recommended for action by staff, the Enforcement Committee reviews all matters in the complaint and the Penalty Matrix contained in [Board Rule 78.10](#) to guide in recommending an appropriate administrative sanction. Often, the matter must go to the State Office of Administrative Hearings (SOAH), where the Administrative Law Judge (ALJ) also refers to the Penalty Matrix contained in [Board Rule 78.10](#). This process is followed to ensure consistency and fairness in levying administrative sanctions. While it may seem that enforcement occurs without rhyme or reason, quite the opposite is true.

"TBCE is to protect the public and should do so by limiting the scope to being a separate and distinct healing art, science and philosophy. It should keep the chiropractor profession as a secondary opinion in the choice of health care options. Keep it a non surgical and pharmaceutical FREE profession."

The role of the TBCE is not to "limit" scope of practice. Scope of practice is determined by the Texas Legislature and codified in law through the Chiropractic Act.

(con't on page 15)



Summary of Actions

A regular meeting of the TBCE was held May 21, 2015, in Austin. The following is a summary of Board actions taken during this meeting.

The Board voted to adopt amendments to the following rules:

- Rule 75.5 – permitting more continuing education hours to be available through online mechanisms
- Rule 75.6 – changing the status for failure to meeting CE requirements to “Continuing Education Conditional”
- Rule 77.9 – made an exception in documentation filing requirements for licensees offering certain pro bono services
- Rule 78.6 – establishes a fee for webinars offered by the Board to new licensees

The Board voted to propose amendments to the following rules:

- Rule 71.2(b) – changing the last sentence to read “The petition shall contain the following information as applicable and except as may be waived by the Executive Director or designee: . . .”
- Rule 72.2 – modified to add subsection (g) reading “Applicants seeking licensure may be refused admission to the practice of chiropractic for certain prohibited acts in accordance with Chiropractic Act, Occupations Code § 201.502.”
- Rule 78.8 – deleting subsection (g)(1)(C), dealing with certain hearings associated with temporary emergency suspensions of licenses

Rule 78.13(a) – changing the word “section” to “chapter” to make clear the definitions contained in Section 78.13 apply to the entirety of Chapter 78

The Board voted to propose the following new rules:

- Rule 80.1 – Dual Office Holding
- Rule 80.2 – Merit Selection Principles
- Rule 80.3 – Sick Leave Pool
- Rule 80.4 – Private Donors
- Rule 80.5 – Contract Monitoring

The Board voted to accept fourteen (14) Agreed Final Orders, one (1) Board Order, one (1) Statutory Revocation Final Order, and ten (10) Cease and Desist Orders.

The Board voted to approve one (1) request to expunge disciplinary action and deny three (3) requests to expunge disciplinary action (for failure to meet expungement criteria). ♦

Survey Says... (con't from page 13)

"Would like to see TBCE work for the chiropractors they regulate. Starting with working toward being one of the many states that offer reciprocity."

TBCE's primary mission is to protect the public's safety and welfare - not work for chiropractors or improve chiropractic. But various trade associations however, have missions that directly intersect with working on behalf of chiropractors and improving chiropractic through lobbying efforts and various means.

The TBCE cannot offer reciprocity because licensure requirements are established in statute through the Chiropractic Act and cannot be changed except by the Texas Legislature.

"As a chiropractor, I feel that my relationship with TBCE is adversarial. Instead of existing to help chiropractors, they exist to oppose and hinder chiropractic."

We are here to help. Yet, bear in mind that the TBCE is required by law to focus on the licensure and registration of chiropractors and facilities in Texas to ensure the public's safety and well being.

It is unfortunate that this licensee feels that the relationship between the TBCE and licensees is adversarial. There are times that our role and mission may require rules or decisions that are contrary to popular opinion within the chiropractic community. However, the TBCE does not oppose chiropractic and does not wish to hinder chiropractic. Recall that the majority of members of the Board are actively practicing chiropractors who will continue practicing long after their terms as Board members have concluded. The Board does not take any action that purposely opposes or hinders chiropractic; but they have taken an oath to protect the public and must wear their "regulator" hat in making their decisions.

"The Board does not do anything to promote the chiropractic profession. Their sole duty is to enforce. They should help enforce against other professions that infringe upon our scope of practice i.e. physical therapists, massage therapists."

The TBCE's role is not to promote the chiropractic profession. If a person practices chiropractic without a license or operates a facility without a registration, the TBCE takes appropriate disciplinary action against that person. However, it is not the TBCE's role nor focus to oppose other professions. Generally, the concerns regarding scope of practice enlargement or restrictions should be directed to the various trade associations that support chiropractic or directly to the Texas Legislature. ♦



The offices of the Texas Board of Chiropractic Examiners will be closed:

- ▶ **LBJ's Birthday**
August 27, 2015
(Skeleton Crew Required)
- ▶ **Labor Day**
September 7, 2015

Board Disciplinary Actions Taken April through June 2015

To view the actual Board Orders, visit: <https://www.tbce.state.tx.us/verify.html>

REINA BERNAL, D.C., Lic. #09588, Galena Park. On May 21, 2015, the Board and Dr. Bernal entered into an Agreed Final Order requiring Dr. Bernal to pay an administrative penalty of \$250 for failure to timely report a change of address for both of the clinics at which she works.

ANNA CARRANZA GESSNER, Fac. #F007621, Pharr. On May 21, 2015, the Board and Anna Gessner entered into a Cease and Desist Order requiring Ms. Gessner to cease and desist from operating a chiropractic facility without a current certificate of facility registration.

DAVID COUTCHER, D.C., Lic. #06283, Pharr. On May 21, 2015, the Board and Dr. Coutcher entered into a Cease and Desist order requiring Dr. Coutcher to cease and desist from operating a chiropractic facility without a current certificate of facility registration.

WILLIAM CUMMINS, D.C., Lic. #11832, Lewisville. On May 21, 2015, the Board entered into an Agreed Final Order requiring Dr. Cummins to receive a Letter of Reprimand for failing to timely renew his license with sufficient funds.

MARK DENNIS, D.C., Lic. #11418, Katy. On May 21, 2015, the Board and Dr. Dennis entered into a Cease and Desist Order requiring Dr. Dennis to cease and desist from operating a chiropractic facility without a current certificate of facility registration.

JOHN DERBONNE, D.C., Lic. #07024, Lake Jackson. On May 21, 2015, the Board and Dr. Derbonne entered into an Agreed Final Order requiring Dr. Derbonne to receive a formal Letter of Reprimand for being in default on his student loan.

SAM EDET, Fac. #F0010157, Houston. On May 21, 2015 the Board and Sam Edet entered into a Cease and Desist Order requiring Mr. Edet to cease and desist from operating a chiropractic facility without a current certificate of facility registration.

JOSE GRADILLA, D.C., Lic. #10167, Carrollton. On May 21, 2015, the Board and Dr. Gradilla entered into an Agreed Final Order requiring

Dr. Gradilla to receive a Letter of Reprimand for failing to comply with a Board Order.

DON GRIFFIS, D.C., Lic. #06297, Granbury. On May 21, 2015, the Board entered into an Agreed Final Order requiring Dr. Griffis to pay an administrative penalty of \$250. The Board found Dr. Griffis failed to timely notify the Board of his change of address.

KIMBERLEY HAHN, D.C., Lic. #09560, San Antonio. On May 21, 2015, the Board and Dr. Hahn entered into an Agreed Final Order requiring Dr. Hahn to pay an administrative penalty of \$250 for failing to timely notify the Board of a change of address.

BRYAN HARRISON, D.C., Lic. #09014, Southlake. On May 21, 2015, the Board issued a Final Order of Statutory Revocation requiring Dr. Harrison to have his license revoked due to his being convicted of a felony criminal offense.

YVONNE KEENER, Fac. #F0011347, Borger. On May 21, 2015, the Board and Ms. Keener entered into a Cease and Desist Order requiring Ms. Keener to cease and desist from operating a chiropractic facility without a current certificate of facility registration.

CLINTON KINSEY, D.C., Lic. #07019, Pearland. On May 21, 2015, the Board and Dr. Kinsey entered into an Agreed Final Order requiring Dr. Kinsey to pay an administrative penalty of \$250. The Board found Dr. Kinsey failed to timely notify the Board of his change of address.

KOLE KOPNICKY, D.C., Lic. #11485, Austin. On May 21, 2015, the Board and Dr. Kopnický entered into an Agreed Final Order requiring Dr. Kopnický to pay an administrative penalty of \$2500, have his license (conditionally) suspended for three years with monitoring, monthly reports, counseling and ordered to successfully complete the EBAS Essay Examination and HB300 training. Dr. Kopnický sent online messages to an individual threatening sexual assault of that individual's daughter. ♦

TBCE Welcomes New DC Licensees Issued May through July 2015

Brandt Adams, D.C.
Amy Akin, D.C.
Ryan Anderson, D.C.
Rachel Benson, D.C.
Olutosin Bisiriyu, D.C.
Jacquelyn Bowman-Garrett, D.C.
Darnell Brown, D.C.
Stephanie Brown, D.C.
Jesse Cao, D.C.
Brittaney Cook, D.C.
Jerimy Cox, D.C.
Jason Dixon, D.C.
Peter Duong, D.C.
Lauren Eisele, D.C.
Ayodele Fadahunsi, D.C.
Meghan Faulkner, D.C.
Angela Fix Ortiz, D.C.
Joshua Flowers, D.C.
Aaron Gajeske, D.C.
Casey Garman, D.C.
Scharlene Gaudet, D.C.
Robert Graham, D.C.
Esther Guerrero, D.C.
Tammia Guest, D.C.
Rueben Gutierrez, D.C.
Shawn Hackworth, D.C.
Nathan Hamilton, D.C.
Kellye Hamm, D.C.
Swati Hans, D.C.
Sarah Hardin, D.C.
Lindsay Hoffman, D.C.
Tracy Hoyt, D.C.
Sarah Jaillet, D.C.
Arianne Johnson-Calvopina, D.C.
Venita Jones, D.C.
Charles Karam, D.C.
Brooke Kelly, D.C.
Kristin Knowlton, D.C.
Kelsi Kriewald, D.C.
Brittany Krueger, D.C.
Gabriela Ludeman, D.C.
Mario Perazza, D.C.
Tony Phan, D.C.
Elizabeth Pieprzica, D.C.

Victor Quiroz, D.C.
Shedrack Raines, D.C.
Richmond Richards, D.C.
Timothy Savoy, D.C.
John Scarborough, D.C.
Anniesha Scott, D.C.
Benjamin Sheehan, D.C.
Jeffrey Shefts, D.C.
Briana Shiley, D.C.
Barry Smith, D.C.
Brandon Solemsaas, D.C.
Gunnsteinn Steinarsson, D.C.
Patrick Storey, D.C.
Daniel Summerkamp, D.C.
Philip Tyler, D.C.
Ashley Welch, D.C.
Richard White, D.C.
Nilouphar Zahedi, D.C.
Spencer Zimmerman, D. C.

Reinstatements:

Jacob Oergel, D.C.
Cheryl Steffins, D.C.
Jeremy Ellis, D.C.
Choong Shim, D.C.
Wilmayra Ramirez, D.C.
Paul Hatton, D.C.





On May 21, 2015, the Board recognized outgoing Board Member Dr. Patrick Thomas for his years of service and contributions to the Texas Board of Chiropractic Examiners and to the State of Texas.

Dr. Thomas has served a term that expired in February of this year. Although his term has expired, he will remain on the Board until a replacement is appointed by the Governor and is confirmed by the Senate.

Left: TBCE Executive Director, Yvette Yarbrough and outgoing Board member Dr. Patrick Thomas.

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Office Hours and Location

The office of the Texas Board of Chiropractic Examiners is located in the William P. Hobby Building, at the corner of 4th Street and Guadalupe Street in downtown Austin. The mailing address is: 333 Guadalupe St., Suite 3-825, Austin, Texas 78701. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for designated holidays.

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LICENSING

Jennifer Hertsensberg, Director of Licensing 512-305-6702

- New DC Applications, DC Renewals and Inactive Status
- Facility Registration Applications and Renewals
- Radiologic Technologist Registration Applications and Renewals
- Approval of CE Course Applications

Sarah Matthews, Licensing Assistant 512-305-6707

- License and Continuing Education Verifications
- Changes of Address
- Open Records Requests

Mary Ann Garcia, Administrative Assistant..... 512-305-6703

- Sales of Demographic Lists

ENFORCEMENT

Scott Parker, Director of Enforcement 512-305-6708

Bob Lawson, Dallas Field Investigator..... 214-534-1928

Michael Campos, Houston Field Investigator 713-376-2279

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Scott Stalnaker, Legal Assistant..... 512-305-6706

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Jo Manning, Executive Assistant..... 512-305-6906

Arlethia Middleton, Chief Financial Officer..... 512-305-6709

Nikell Williams, Programmer Analyst..... 512-305-7874